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OFFICE OF PETITIONS

In re Application of :
Seth Harman, et al. :
Application No. 09/838,927 :
Filed: April 23, 2001 :
Attorney Docket No. 79113-277233 :

ON PETITION

This is a decision on the petition, filed July 11, 2008, to revive the above-identified application under 37 CFR 1.137(b).

The petition is noted signed by a registered attorney or agent of record. However, in accordance with 37 CFR 1.34(a), the signature of Michael J. Strauss appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence regarding this application will be mailed solely to the address of record.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 9, 2008, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on April 10, 2008. This decision precedes the mailing of a Notice of Abandonment. On July 11, 2008, the present petition was filed.


37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal and the appeal fee of \$255; (2) the petition fee of \$770; and (3) an adequate statement of unintentional delay.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application is being referred to Technology Center AU 3622 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. Inquiries relating to the prosecution of the application should be referred to the Technology Center.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: MICHAEL J. STRAUSS
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